SBCivil Writ Petition No.5810/1993

Kamlesh & Anr.
v.
Estate Officer, Devasthan Department, Jaipur & Ors.

Date of Order :: 24th March, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioners.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. B.K.Bhatnagar, for the respondents No.4 to 12.

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At Jaswant Jadeji Sarai Jodhpur premises No.140/8 was rented out by the Department of Devasthan to Late Shri Baluram at the rent of Rs.35/- per month. After death of Shri Baluram, according to the petitioners, they were making payment of rent and the same was accepted by the Devasthan Department under protest. A notice under Section 106 of the Transfer of Property Act was issued to the petitioner No.2 by Department of Devasthan terminating her tenancy w.e.f. 31.10.1991. The premises concerned was not vacated by the petitioner, therefore, the Assistant Commissioner, Devasthan preferred an application under Section 4 of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964 (hereinafter referred to as “the Act of 1964) before the Estate Officer. The Estate Officer by order dated 23.12.1992 ordered for eviction of the petitioner No.2 from the premises in question and further declared the Department of Devasthan entitled to demand the due

rent and also for mesne profit. A notice accordingly was issued under Section 5(1) of the Act of 1964 and that was served upon the petitioner No.2. Being aggrieved by the order dated 23.12.1992 an appeal under Section 9 of the Act of 1964 was preferred and that too came to be decided by the appellate authority i.e. the Additional District Judge No.2, Jodhpur by judgment dated 30.10.1993. Learned Additional District Judge No.2, Jodhpur by judgment dated 30.10.1993 accepted the appeal in part while setting the order dated 23.12.1992 to the extent of making order for recovery of mesne profit and enhanced due rent.

By instant petition for writ a challenge is given to the judgment dated 30.10.1993 passed by learned Additional District Judge No.2, Jodhpur.

It is pertinent to note that instant petition for writ is filed on behalf of petitioner No.1 Shri Kamlesh son of Late Shri Baluram and petitioner No.2 Smt. Sobhagyawati widow of Late Shri Baluram. Shri Kamlesh was not party to the proceedings before the Estate Officer as well as before the appellate authority though it is the position admitted that the notice issued to Smt. Sobhagyawati by the Estate Officer was served upon Shri Kamlesh and the tenancy by the notice under Section 106 of the Transfer of Property Act too was terminated relating to Smt. Sobhagyawati. The respondents No.4 to 12 are other

legal representatives of Late Shri Baluram than the petitioners No.1 and 2. These respondents were also not party to the proceedings before the Estate Officer as well as before the appellate court.

While giving challenge to the judgment dated 30.10.1993 and the order dated 23.12.1992 it is contended by counsel for the petitioners that there is violation of principles of natural justice as no proper notice was served upon the petitioner No.2, consequent thereto she failed to defend herself. It is also stated that exparte proceedings were erroneously initiated by the Estate Officer against the petitioner No.2.

The other submission of counsel for the petitioners is that the proceedings under the Act of 1964 were initiated only against the petitioner No.2 whereas the petitioner No.1 and the respondents No.4 to 12 are also legal representatives of Late Shri Baluram and, therefore, in their absence no order for eviction from the premises concerned could have been passed.

A reply to the writ petition is filed on behalf of the Department of Devasthan stating therein that sufficient service of notice was made upon the petitioner No.2 and she also acknowledged it through a telegram. It is further contended on behalf of

respondent Devasthan Department that the order of eviction was passed by the Estate Officer by giving adequate opportunity of hearing to the person having right and interest with the suit premises.

Heard counsel for the parties.

I do not find any force in contention of counsel for the petitioners that no opportunity of hearing was given to the petitioner No.2. From reading of the order dated 23.12.1992 it is quite clear that the petitioner No.2 received the notice issued by the Estate Officer and then she sent a telegram seeking an adjournment. On basis of the telegraphic request the matter was adjourned but the petitioner did not care to appear before the Estate Officer. The Estate Officer in these circumstances has rightly proceeded exparte with the matter. No error, therefore, was committed by the Estate Officer in proceeding exparte against the petitioner No.2.

The next contention of counsel for the petitioners is that beside the petitioner No.2 the petitioner No.1 and the respondents No.4 to 12 are also legal representatives of Late Shri Baluram Mali and, therefore, no order for eviction could have been passed by the Estate Officer in their absence with regard to eviction from the premises concerned.

The respondents No.4 to 12 are represented through their counsel but no reply to the writ petition is filed by them. They have also not shown their any right and interest with the suit premises. From their conduct it is apparent that they are having no interest with the disputed premises and, therefore, the order passed by the Estate Officer and the judgment passed by learned Additional District Judge No.2, Jodhpur do not require any interference on the count that the notice was not issued to the respondents No.4 to 12 before initiating proceedings under the Act of 1964.

So far as the petitioner No.1 is concerned, he is certainly having interest in the suit premises as he is presently having possession over the premises in question. The Estate Officer should have proceeded under the Act of 1964 by giving a notice to the petitioner No.1 also. However, the petitioner No.1 was not party to the proceedings before the Estate Officer and he also not preferred any appeal under Section 9 of the Act of 1964 giving challenge to the order dated 23.12.1992, therefore, the order passed by the Estate Officer and the appellate court cannot be declared illegal and set aside on that count. The order and judgment above certainly cannot be given effect qua the petitioner No.1 being not party to the proceedings.

Accordingly, this petition for writ is disposed of by maintaining the judgment dated 30.10.1993 and the order dated 23.12.1992, however, these are having no application on the petitioner No.1. It is open for the Department of Devasthan to proceed against the petitioner No.1 under the Act of 1964 in accordance with law.

(GOVIND MATHUR),J.

kkm/ps.